

## UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

CALIFORNIA

JUL 1 4:29 PM

## In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

AmericaOnline, Inc.  
22000 AOL Way  
Dulles, Virginia

APPLICATION AND AFFIDAVIT  
FOR SEARCH WARRANT

Case Number:

DEPUTY  
08 MJ 2014I, James Yates

being duly sworn depose and say:

I am a(n) Special Agent with Immigration and Customs Enforcement

and have reason to believe

Official Title

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

See Attachment "A" (incorporated herein).

in the Northern District of Virginia

there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment "B" (incorporated herein).

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

Evidence, fruits of crime, property designed for use or used in committing criminal offenses

concerning a violation of Title 18 United States code, Section(s) 542 & 371

The facts to support a finding of probable cause are as follows:

See attached Affidavit of ICE Special Agent James Yates.

Continued on the attached sheet and made a part hereof:

☒ Yes☐ No

Sworn to before me and subscribed in my presence,

7/1/08

Date

at

Signature of Affiant

**SAN DIEGO, CALIF.**

City

State

Barbara L. Major

U.S. Magistrate Judge

Name of Judge

Title of Judge

Signature of Judge

**Attachment A**

AmericaOnLine, Inc. is an internet service provider with its primary computer information systems and other electronic communications and storage systems, records and data located at 22000 AOL Way, Dulles, Virginia.

**Attachment B**

**I. Service of Warrant**

The officer executing the warrant shall permit AmericaOnLine, Inc., as custodian of the computer files described in Section II below, to locate the files and copy them onto removable electronic storage media and deliver the same to the officer.

**II. Items subject to seizure**

All subscriber and/or user information, all electronic mail, images, text messages, instant messages, histories, buddy lists, profiles, method of payment, detailed billing records, access logs, transactional data, electronic files that the subscriber has stored in the subscriber's "briefcase" and "photos" area including but not limited to all documents, images and spreadsheets. and any other files associated with the following accounts and screen names:

ggmcraig@aol.com

The search of the data supplied by AmericaOnLine, Inc. pursuant to this warrant will be conducted as provided in the affidavit submitted in support of this search warrant and will be limited to securing communications and attachments for the period from March 1, 2005 to present, related to the valuation of shipments of mushrooms from Japan to the United States and the payment of Customs duties on the same, the identities of any co-conspirators and all other information reflecting potential violations of Title 18, United States Code, Sections 371 and 542.

**AFFIDAVIT**

**STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

I, James Yates, being duly sworn, hereby depose and state:

I am a Special Agent for the United States Immigration and Customs Enforcement having been duly sworn, depose and say:

1. I am employed as a Special Agent with the United States Immigration and Customs Enforcement (ICE) of the Department of Homeland Security, and have been so employed since May 2006. Previously, I was employed by the United States Customs Service, which was later reorganized as the United States Customs and Border Protection, as an Officer since September 2002. I have attended the 23-week training at the Federal Law Enforcement Training Center located in Glynco, Georgia, for Immigration and Customs Enforcement Special Agents, as well as their 11-week United States Customs Service inspector training program, and their 2-week advanced fraud training, a course devoted solely to Customs fraud.

2. The information contained within this affidavit is based upon my personal observations, experience, knowledge and discussions with other agents, employees of the agency by which I am employed with as well as employee's from Customs and Border Protection, present and former employee's of the company being investigated, as well as the review of documents and other evidence obtained in the course of this investigation. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a search warrant, it does not set forth each and every fact that I or others have learned during the course of this investigation.

3. I am conducting an investigation into individuals alleged to be making the entry of goods by means of a false statement, in violation of Title 18, United States Code, Section 542, and conspiring to do the same, in violation of Title 18, United States Code, Section 371.

4. Section 542 of Title 18 of the United States Code states that "Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means

1 of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance,  
2 or makes any false statement in any declaration without reasonable cause to believe the truth of such  
3 statement, or procures the making of any such false statement as to any matter material thereto without  
4 reasonable cause to believe the truth of such statement, whether or not the United States shall or may  
5 be deprived of any lawful duties; Shall be fined for each offense under this title or imprisoned not more  
6 than 2 years, or both.

7       5.       This affidavit is made in support of an application for a warrant to search the internet  
8 service provider, AmericaOnline, Inc., located as described in Attachment A, for records relating to the  
9 username "ggmcraig@aol.com," as described in Attachment "B" to this application and warrant, for the  
10 period from March 1, 2005, to the present, which constitute evidence, fruits, and instrumentalities of  
11 violations of federal criminal law, namely, Title 18, United States Code, Sections 371 and 542.

12       6.       In December 2007, I received information alleging that Golden Gourmet Mushrooms,  
13 Inc. (GGM) is undervaluing importations of mushrooms through a double-invoicing scheme with  
14 Japanese supplier Hokuto Corporation (HC). The Government Accountability Project, a non-  
15 government entity, provided copies of documents relating to the importation of mushrooms by GGM  
16 to Immigration and Customs Enforcement. These documents included copies of purchase orders,  
17 invoices, shipping information, entry documentation and wire transfer information.

18       7.       I examined these documents with Supervisory Import Specialist Deanna Boldt, who has  
19 examined thousands of U.S. Customs entry documents and participated in numerous investigations  
20 involving the valuation of merchandise. We verified that the information on the invoices and entry  
21 documents provided by the Government Accountability Project matched what was found in the Customs  
22 Automated Commercial System. We reviewed purchase orders between GGM and HC which bore a  
23 considerably higher value than what was declared on the Entry Summary, as well as copies of wire  
24 transfers from Union Bank of California, confirming that GGM actually paid the higher prices shown  
25 on the purchase orders, all provided by the Government Accountability Project. For example, we  
26 reviewed shipping invoice number 463 provided to Customs with the Entry documents on October 7,  
27 2006. The invoice submitted to Customs reflected 1,700 cartons of mushrooms valued at \$12,360, with  
28 a declared duty of \$3,110.66. We also reviewed the confirmation order between GGM and HC for

1 invoice number 463, which reflected the sale of 1,700 cartons of mushrooms valued at \$32,985, and  
2 records of a wire transfer from GGM to HC on November 21, 2006, of \$32,985. Based on a true value  
3 of \$32,985, the duty that should have been paid was \$6,597, or a loss of duty of approximately \$3,487  
4 on this single shipment.

5 8. According to records from the Customs Automated Commercial System, GGM, located  
6 at 2033 Marilyn Lane, San Marcos, California, began importing mushrooms from HC of Japan in March  
7 of 2005. HC has been the sole international supplier of mushrooms for GGM since that time. The  
8 mushrooms are listed on the entries using two separate Harmonized Tariff Schedule numbers used to  
9 describe mushrooms, fresh or chilled. A review of the past importing history of GGM disclosed 159  
10 importations made from 2005 through 2007 using these two Harmonized Tariff Code numbers. All of  
11 these entries were shipped from Japan by HC, and entered the United States at the port of Los Angeles.  
12 Nippon Express is the Customs broker that handled the shipment and filing of entry documentation into  
13 the United States.

14 9. On January 30, 2008, I interviewed Thomas Kevin Finnerty, a former employee of GGM.  
15 Finnerty stated that he was employed from approximately July of 2005 to October of 2007 at GGM as  
16 the sales manager. He stated that GGM was owned and operated by Craig Anderson and Nick Conner.  
17 Finnerty said that Anderson made and implemented all decisions at GGM. Finnerty stated that when he  
18 was hired, GGM already had a contract in place to import mushrooms from HC.

19 10. Finnerty stated that he was a chief point of contact at GGM regarding shipments of  
20 mushrooms from HC. Finnerty stated that much of the business between GGM and HC was conducted  
21 by email. Finnerty's primary contact at HC was a man named Ted Yamamoto, Finnerty stated that  
22 Yamamoto handled the arrangements for HC regarding the importations of mushrooms. I showed  
23 Finnerty copies of the documents provided by the Government Accountability Project and he confirmed  
24 that those documents appeared to be some of the same documents that he had processed for orders  
25 between GGM and HC. Finnerty was asked about the difference in the value on the confirmation order  
26 from HC and the invoice supplied to Customs and Border Protection ("CBP"), with the entry documents.  
27 Finnerty stated that during his employment at GGM all invoices supplied to CBP were undervalued by  
28

1 approximately 50% and that the true value of the shipments could be found on the confirmation orders  
2 sent from HC to GGM.

3 11. On Tuesday April 8, 2008 I executed a federal search warrant, issued in the Southern  
4 District of California, at the commercial business office of GGM, located at 2033 Marilyn Lane,  
5 San Marcos, California. Craig Anderson, Owner and Chief Executive Officer of GGM was present at  
6 that location and agreed to be interviewed regarding the importation of mushrooms. Craig Anderson was  
7 advised of his Miranda rights, voluntarily waived them and signed a written consent form.

8 12. During the interview I asked Anderson if he had a copy of the sales contract between  
9 GGM and HC. Anderson stated that he might have a copy inside his AOL account, furthermore he stated  
10 that he had saved many of the correspondences concerning the importation of mushrooms inside this  
11 account. I observed Anderson log onto an AOL account with the name "ggmcraig," I asked Anderson  
12 if he minded me watching and he told me that he did not mind and that he had nothing to hide. Anderson  
13 showed me numerous folders that he had in his AOL account. Several of the folders had email that dealt  
14 specifically with the importation of mushrooms from HC. Anderson opened several stored messages that  
15 dealt with importations of mushrooms while looking for a copy of the sales contract. Anderson stated  
16 that the AOL account was his primary email account and the one he used in correspondence regarding  
17 the importation of mushrooms.

18 13. I reviewed numerous hard copies of emails that were seized from the business office of  
19 GGM, during the execution of the search warrant on April 8th. Most of the emails that discuss pricing  
20 between GGM and HC or invoice values for customs were either to or from the username "ggmcraig."  
21 For example; an email dated April 01, 2005, from: ggmcraig@aol.com, to: m.hidaka@weconnner.co.jp,  
22 within the body of the message it states "GGM accepts Hokuto terms of \$.70 and \$.80 for Buna and  
23 Maitake respectively plus duty by GGM a/c." Comparison of these prices with purchase orders and  
24 copies of wire transfers show that this is the price that is actually paid between GGM and HC for those  
25 types of mushrooms to Customs and Border Protection.

26 14. I reviewed an email dated Aug 26, 2005, from: t.yamamoto@hokto-kinoko.co.jp, to:  
27 ggmcraig@aol.com, the email is addressed to Craig and discusses several issues regarding the  
28 importation of mushrooms, issue number 2 states "Custom px (line break) We lower px to

1 USD0.35/100g for buna & bunapi, USD0.40/100g for maitake.” I compared the date of this message  
2 with copies of the invoices presented to CBP and noticed that at this time GGM began declaring the  
3 prices discussed in this email on those types of mushrooms to Customs and Border Protection, this price  
4 was lower than the actual price paid by GGM for the mushrooms. Prior to this email GGM was declaring  
5 USD0.40 for buna & Bunapi and USD0.50 for maitake to Customs and Border Protection.

6 15. On April 16, 2008 I submitted a preservation letter to AOL LLC for the user name  
7 “ggmcraig” requesting that AOL LLC preserve any and all subscriber information, profiles, account  
8 contents, email records (saved mail, sent mail, received mail, deleted mail, drafts, folders, etc.), log  
9 records of account access and any identifying Internet Protocol (“IP”) addresses.

10 16. I examined copies of emails, the sale contract, confirmation orders, invoices, other  
11 documentation from the search warrant and documentation from Customs and Border Protection records  
12 with Customs Import Specialist Boldt. We determined that the loss of revenue, due to unpaid duties, on  
13 one hundred and twenty-five commercial entries of mushrooms made by GGM from March of 2005  
14 through August of 2007 to be \$564,341.79 dollars.

15 17. On April 30, 2008, I interviewed Jeri Rastello, the former Bookkeeper for GGM. During  
16 the interview Rastello stated that Craig Anderson would receive emails regarding importations and  
17 recognized the username “ggmcraig” as the email name he used in correspondence.

18 18. AmericaOnLine (“AOL”) is an Internet company which, among other things, provides  
19 electronic communication services to its subscribers. AOL's electronic mail service allows AOL  
20 subscribers to communicate with other AOL subscribers and with others through the Internet. AOL  
21 subscribers access AOL's services through the Internet.

22 19. Subscribers to AOL use screen names during communications with others. The screen  
23 names may or may not identify the real name of the person using a particular screen name. Although  
24 AOL requires users to subscribe for a free AOL account, AOL does not verify the information provided  
25 by the subscriber for its free services.

26 20. At the creation of a AOL account and for each subsequent access to the account, AOL  
27 logs the IP address of the computer accessing the account. An IP address is a unique address through  
28 which a computer connects to the Internet. IP addresses are leased to businesses and individuals by

1 Internet Service Providers. Obtaining the IP addresses that have accessed a particular AOL account  
2 often identifies the Internet Service Provider that owns and has leased that address to its customer.  
3 Subscriber information for that customer then can be obtained using appropriate legal process.

4 21. As a federal agent, I am trained and experienced in identifying communications relevant  
5 to the crimes under investigation. The personnel of AOL are not. I also know that the manner in which  
6 the data is preserved and analyzed may be critical to the successful prosecution of any case based upon  
7 this evidence. Computer Forensic Examiners are trained to handle digital evidence. AOL employees  
8 are not. It would be inappropriate and impractical, however, for federal agents to search the vast  
9 computer network of AOL for the relevant accounts and then to analyze the contents of those accounts  
10 on the premises of AOL. The impact on AOL's business would be severe

11 22. Therefore, I request authority to seize all images, text messages and other content from  
12 the AOL accounts, as described in Attachment B. In order to accomplish the objective of the search  
13 warrant with a minimum of interference with the business activities of AOL, to protect the rights of the  
14 subject of the investigation and to effectively pursue this investigation, authority is sought to allow AOL  
15 to make a digital copy of the entire contents of the accounts subject to seizure. That copy will be  
16 provided to me or to any authorized federal agent. The contents will then be analyzed to identify  
17 communications and other data subject to seizure pursuant to Attachment B. Relevant data will be  
18 copied to separate media. The original media will be sealed and maintained to establish authenticity,  
19 if necessary.

20 23. Analyzing the data to be provided by AOL requires special technical skills, equipment  
21 and software. It also can be very tedious. Searching by keywords, for example, often yields many  
22 thousands of "hits," each of which must be reviewed in its context by the examiner to determine whether  
23 the data is within the scope of the warrant. Merely finding a relevant "hit" does not end the review  
24 process. Certain file formats do not lend themselves to keyword searches. Keywords search text. Many  
25 common electronic mail, database and spreadsheet applications, which files may have been to electronic  
26 mail, do not store data as searchable text. The data is saved in a proprietary non-text format. And, as  
27 the volume of storage allotted by service providers increases, the time it takes to properly analyze  
28 recovered data increases dramatically.


1           24. Based on the foregoing, searching the recovered data for the information subject to  
2 seizure pursuant to this warrant may require a range of data analysis techniques and may take weeks or  
3 even months. Keywords need to be modified continuously based upon the results obtained; criminals  
4 can use code to avoid keyword searches and mislabel files, encrypt files, deliberately misspell certain  
5 words and take other steps to defeat law enforcement.

6           25. All forensic analysis of the recovered data will be directed exclusively to the  
7 identification and seizure of information within the scope of this warrant.

8           26. Based on the foregoing, there is probable cause to believe the items identified in  
9 Attachment B have been used in the commission of a crime and constitute evidence, fruits, and  
10 instrumentalities of violations of Title 18, United States Code, Sections 371 and 542 and will be found  
11 on the at the premises to be searched as provided in Attachment A.

12           I declare under penalty and perjury that the foregoing is true and correct to the best of my  
13 knowledge.

14           Dated: \_\_\_\_\_ July, 2008.

15  
16   
17 James Yates, Special Agent  
18 U.S. Immigration and Customs  
19 Enforcement

20           Subscribed to and sworn before me  
21 this 13 day of July, 2008.

22   
23 The Honorable Barbara L. Major  
24 United States Magistrate Judge  
25  
26  
27  
28